IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4520 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANIL MOHANLAL PODAR

Versus

SR.DIVISIONAL MANAGER

Appearance:

MR PRASHANT MANKAD FOR MR YOGESH S LAKHANI
for Petitioner
MR AK CLERK for Respondent No. 1, 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 20/04/2001

ORAL JUDGEMENT

1. The petitioner was initially appointed by Life Insurance Corporation of India as an Assistant on 28/4/1986 after completing the requisite training period.

On 15/11/1986, the petitioner applied for permission to prosecute further studies and as such permission was granted on 27/10/1986, with the stipulation that no leave for preparation for examination shall be granted and further that the studies of the petitioner would not in any way disturb the service of the petitioner. It appears that the petitioner's service was confirmed vide letter dated 17/10/1986 and as he was Graduate two special increments were granted to him. On 14/10/1987 the petitioner appeared for departmental interview for the post of Micro Processor Operator and on being selected he was posted at Idar from 25/11/1987.

2. In pursuance of the advertisement issued in newspaper calling for application for post of Development Officer, the petitioner applied as he was having requisite qualification and after clearing the written examination and the oral test the name of the petitioner was recommended by the selection committee for appointment as Apprentice Development Officer. On 9/8/1990 the petitioner was appointed as Apprentice Development Officer and was sent for theoretical training for three months from 16/8/1990. It is relevant to note that during the period of training the petitioner was paid his regular pay along with allowance to which he was entitled and not stipend which was being paid to other trainees. On completion of the training the petitioner was entitled to be appointed as Development Officer on probation but inspite of the fact that he had successfully completed the training period and further undertaken various development works earning revenue for the corporation in process, he was not posted and appointed as Development Officer on Probation.

3. An office order dated 2/7/1991 was served on the petitioner stating that the petitioner had been reverted to the post of Micro Processors Operator with immediate effect. It is this order which is under challenge in the present petition and the following reliefs have been sought :

"17(a) issue a writ of mandamus or any other writ order or direction directing the respondents to allow the petitioner to work as Development Officer probationer.

(b) issue a writ of certiorari or any other appropriate writ or direction holding that the impugned order dtd. 4-7-91 at Annexure 'F' is null and void and is

passed against the principles of natural justice and be pleased to quash and set aside the impugned order at Annexure F, by further holding that petitioner is deemed to be promoted as Dev.Officer on probation w.e.f.18/11/90."

4. On behalf of the respondent corporation affidavit-in-reply dated 17/12/1991 was read extensively in support of the submission that the petitioner had misconducted himself. The charge against the petitioner was that he marked "present" in the attendance register on 9/10-5-1989 when he appeared in second semester of first LL.B. examination at Ahmedabad. It is further stated in the affidavit that the petitioner has confessed that he had not sought permission from the office for taking examination and the petitioner had further confessed before the Inquiry Officer that he had taken the said examination. Therefore, the case of the respondent corporation was that the petitioner had prosecuted studies without obtaining permission and appeared for the examination on 8/9/10-5-1989 and tampered with the attendance register by marking presence of those days when in fact he had actually appeared in the examination at Ahmedabad. It was because of these facts that the respondent corporation had reverted him to the post of Micro Processor Operation. It was further submitted that when the petitioner was appointed as Apprentice Development Officer, one of the conditions of appointment viz. condition no.4 stipulated that during the period of apprenticeship the petitioner was liable to be reverted to the previous post without any notice. That respondent corporation could have reverted the petitioner without any notice yet the petitioner had been heard, a departmental inquiry was conducted and only after that when the petitioner was found guilty he was reverted.

5. The petitioner has filed an affidavit-in-rejoinder dated 6/2/1992 wherein at Annexure "G" letter dated 10/7/1990 has been filed. The said letter is reproduced hereunder :

" From
A.M.Podar,
M.P.O. Sr.No.432636
L.I.C.of India,
Idar.
25th June,1990.
10th July,

To;

The Divisional Manager,
L.I.C. of India,
Gandhinagar Division,
GANDHINAGAR.

Dear Sir,

Re : Your letter ref.GDO :DM's:AAD dt.9.5.90.

I am in receipt of your letter dt.9.6.1990 and have to state that I had appeared for the Winter Samister on 9th and 10th of May,1989. As regards the signing my muster-roll on these dates, I may inform you that myself and another operator were allocated same extra work by the branch manager to be carried out on Micro-processors by sitting late hours in the evening. As a compensation we were told by the Branch Manager that instead of over-time payments, we will be allowed adjustment leave "off the record". As I have to appear for the LL.B. Examination, I requested the Branch Manager to allow me 9th and 10th of May, 1989 as adjustment, as I had to appear for the examination. The branch manager told me that I might not attend the office for these days but could sign the muster afterwards. These fact is known to A.D. Shri M.R.Christian and also H.G.A.Shri K.B.Dave. In fact, the Branch Manager had held consultation with H.G.A.Shri K.B.Dave before allowing me the adjustment/compensatory leave. At the same time, the other operator was similarly allowed some other dates.

As regards to seeking the permission for part-time study, I had to inform you that I had orally informed the Branch Manager of studying LL.B. Not only this, but for appearing the examination I have saught his permission as stated above.

Hope the matter is clear.

Yours faithfully,
Sd/- A.M.Podar."

6. Therefore, on going through the entire record it is apparent that the petitioner had already been called

upon to explain as to in what circumstances he had appeared for the examination in 1989 and marked his presence in attendance register. The petitioner has specifically made out a case that as Micro Processor Operator he was allocated extra work by the Branch Manager and the same was completed by sitting late hours beyond the office hours and that instead of the overtime the Branch Manager had permitted him to take adjustment leave. It is further stated that Branch Manager had permitted the petitioner not to attend the office on the said days but he could sign the muster afterwards. In support of this statement the petitioner has given reference of two other officers of the branch and stated that the Branch Manager had consulted them before permitting such adjustment/compensatory leave.

7. At the time of hearing we put to the learned Counsel Mr.Patel appearing for the respondent corporation as to whether these averments made by the petitioner in writing have been verified in view of the fact that there is no denial of the same by the respondent corporation and further whether the Branch Manager at the relevant point of time and the officers named in the letter dated 10/7/1990 had been contacted to ascertain the position. It was submitted on behalf of the respondent corporation that no inquiries were conducted and that the respondent corporation was not in a position to dispute the aforesaid written averments.

8. In view of this factual position and the circumstances as existing on record, it is not possible to accept the contention raised on behalf of the respondent corporation that there was any misconduct on the part of the petitioner. As can be seen from the facts narrated hereinabove, the petitioner had acted in the way he did with previous knowledge and consent of the Branch Manager under whom he was working, and if that be so, it would not lie in the mouth of the respondent corporation to state that the petitioner was guilty of the charges framed against him especially when admittedly no action was initiated against the Branch Manager or any other officers who were in charge and responsible for running of the Branch in question.

9. This petition is therefore allowed and the impugned order dated 2/7/1991 at Annexure "F" is quashed and set aside. The respondent corporation is directed to grant all consequential benefits to the petitioner including promotional/posting as if the impugned order dated 2/7/1991 had never been passed. Rule made absolute to the aforesaid extent with no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt